

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHIKEB SADDOZAI,  
Plaintiff,

v.

RON DAVIS, et al.,  
Defendants.

Case No. 18-05558 BLF (PR)

**ORDER DENYING MOTIONS RE  
APPOINTMENT OF COUNSEL;  
DENYING MOTION TO AMEND AS  
UNNECESSARY; DENYING  
MOTION TO DISMISS AS MOOT;  
GRANTING MOTION FOR  
EXTENSION OF TIME TO FILE  
OPPOSITION**

(Docket Nos. 24, 26, 27, 30, 33)

Plaintiff, a state prisoner, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983. The Court found the second amended complaint, Dkt. No. 19 (hereinafter “SAC”), stated a cognizable claim for failure to protect under the Eighth Amendment and ordered the matter served on Defendant Correctional Officer Clawson at the San Quentin State Prison.<sup>1</sup> Dkt. No. 22. Plaintiff filed a third amended complaint on March 6, 2020, Dkt. No. 29, following Defendant Clawson’s filing of a motion to dismiss on March 2, 2020, Dkt. No. 27. Defendant Clawson filed notice conceding that since Plaintiff is permitted to amend his complaint as a matter of course within twenty-one days of their

<sup>1</sup> The Court dismissed all other claims and defendants from this action for failure to state a claim, as well as failure to comply with Rules 18(a) and 20(a) of the Federal Rules of Civil Procedure. Dkt. No. 22 at 3-4.

1 motion under Federal Rule of Civil Procedure 15(a)(1)(B), Plaintiff's third amended  
2 complaint is now the operative complaint and Defendant's motion to dismiss the second  
3 amended complaint is rendered moot. Dkt. No. 31. Accordingly, Plaintiff's motion to  
4 amend is DENIED as unnecessary, Dkt. No. 26, and the third amended complaint is the  
5 operative complaint in this matter under Rule 15(a)(1)(B). Dkt. No. 29. Defendant's  
6 motion to dismiss the second amended complaint is DENIED as moot. Dkt. No. 27. The  
7 Court addresses other pending motions below.

## 8 9 DISCUSSION

### 10 A. Motions Re Appointment of Counsel

11 The Court denied each of Plaintiff's three motions for appointment of counsel for  
12 lack of exceptional circumstances, with the last order filed on August 26, 2019. Dkt. Nos.  
13 7, 12, 21. On January 15, 2020, Plaintiff filed another motion to appoint counsel, Dkt. No.  
14 24, and a motion for reconsideration of the last court order denying appointment of  
15 counsel, Dkt. No. 30. Although titled differently, these two motions essentially assert the  
16 same arguments. Plaintiff additionally requests a preliminary injunction and a court order  
17 for prison officials to "cease and desist violence, harassment and retaliation to interfere[e]  
18 with plaintiff's civil action." Dkt. No. 24 at 2; Dkt. No. 30 at 2. Plaintiff is currently  
19 being housed at Corcoran State Prison ("CSP"), which is not a party to this action.  
20 Accordingly, the Court has no jurisdiction over CSP or any of its employees in this action  
21 to issue an injunctive order against them. Plaintiff must file any new claims against CSP  
22 employees in a separate civil rights action.

23 Plaintiff asserts the following grounds for appointment of counsel: lack of legal  
24 material and access to the law library and legal assistance, and the need for assistance to  
25 conduct discovery. Dkt. No. 24 at 4-7; Dkt. No. 30 at 4-7. The Court notes that despite  
26 the challenges he alleges, Plaintiff managed to file another motion to amend the complaint  
27 and the proposed third amended complaint. Dkt. Nos. 26, 29. With respect to discovery,

1 Plaintiff recently filed a motion requesting more time to conduct discovery to oppose  
2 Defendant's motion which is generally articulate and organized. Dkt. No. 33.  
3 Accordingly, the motions for appointment of counsel and for reconsideration are **DENIED**  
4 for lack of changed circumstances. *See Agyeman v. Corrections Corp. of America*, 390  
5 F.3d 1101, 1103 (9th Cir. 2004); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997);  
6 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wilborn v. Escalderon*, 789 F.2d  
7 1328, 1331 (9th Cir. 1986). This denial is without prejudice to the Court's *sua sponte*  
8 appointment of counsel at a future date should the circumstances of this case warrant such  
9 appointment.

10 **B. Motion for Extension of Time to Complete Discovery**

11 On March 13, 2020, Defendant filed a motion to dismiss Plaintiff's third amended  
12 complaint. Dkt. No. 32. On March 19, 2020, Plaintiff filed a motion for extension of time  
13 to complete discovery "so that plaintiff can get evidence to defeat Defendant's Motion to  
14 Dismiss." Dkt. No. 33 at 2. The Court construes the motion as one for an extension of  
15 time to file opposition to Defendants' motion to dismiss. Defendant filed a conditional  
16 non-opposition to Plaintiff's request for an extension of time, stating that he does not  
17 oppose a finite extension of time of reasonable duration for Plaintiff to respond. Dkt. No.  
18 34. More recently on April 20, 2020, Defendant filed a "notice of assisted filing and non-  
19 opposition to Plaintiff's request for extension of time to oppose the motion to dismiss."  
20 Dkt. No. 37. Attached are some papers which Plaintiff mailed to Defendant's counsel,  
21 asking him to forward to the Court. *Id.*

22 In light of Defendant's non-opposition and good cause appearing, Plaintiff's motion  
23 is GRANTED. Dkt. No. 33. Plaintiff shall file an opposition in the time set forth below.

24  
25 **CONCLUSION**

26 For the reasons discussed above, the Court orders as follows:

- 27 1. Plaintiff's motions regarding appointment of counsel are **DENIED**. Dkt.  
28

Nos. 24, 30.

2. Plaintiff's motion to amend is **DENIED** as unnecessary. Dkt. No. 26. The third amended complaint, Dkt. No. 29, is now the operative complaint in this action.


3. Defendant's motion to dismiss the second amended complaint is **DENIED** as moot. Dkt. No. 27.

4. Plaintiff's motion for an extension of time to file opposition to Defendant's latest motion to dismiss is **GRANTED**. Dkt. No. 33. Plaintiff's opposition shall be filed **no later than twenty-eight (28) days from the date this order is filed**. Defendant shall file a reply brief no later than **fourteen (14) days** after Plaintiff's opposition is filed.

This order terminates Docket Nos. 24, 26, 27, 30, and 33.

**IT IS SO ORDERED.**

**Dated:** April 23, 2020

  
BETH LABSON FREEMAN  
United States District Judge